

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 59

DISTRICT OF COLUMBIA, PETITIONER,

vs.
PAUL M. DEHART

WITNESSETH THAT THE DISTRICT OF COLUMBIA
APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED APRIL 25, 1941.

CERTIORARI GRANTED MAY 26, 1941.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 59

DISTRICT OF COLUMBIA, PETITIONER,

vs.

PAUL M. DeHART

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 18, 1941.

1 **BOARD OF TAX APPEALS FOR THE
DISTRICT OF COLUMBIA**

RECEIVED AND FILED AUG. 28, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

PAUL M. DeHART, Petitioner, v

vs.

DISTRICT OF COLUMBIA, Respondent.

DOCKET No. 339

PETITION

The above named petitioner petitions for a cancellation of an assessment of taxes against him and alleges as follows:

1. The petitioner is an individual with residence at 1426 Massachusetts Avenue, S.E., Washington, D. C.

2. The tax in controversy is an income tax for the calendar year ending December 31, 1939, and in the amount of \$16.36.

3. The individual income tax return was dated January 29, 1940, and the tax was paid by the petitioner under protest in writing on February 7, 1940, as will appear in the copy of the individual income tax return hereto attached as Exhibit "A."

4. It is the belief of the petitioner that the disallowance made by the Board of Assistant Assessors was based upon the following error: That the petitioner was domiciled in the District of Columbia on December 31, 1939.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

a. That the petitioner while an employee of the United States Government, Washington, D. C., retained his residence

at 1933 N. 4th Street, Harrisburg, Pennsylvania, and was therefore not domiciled in the District of Columbia on December 31, 1939.

b. That the petitioner is registered as a voter in Dauphin County, Pennsylvania, a photostat copy being filed with the individual income tax return.

c. That the petitioner pays occupational tax to the County of Dauphin, Pennsylvania.

d. That the petitioner has seen notices in newspapers of decisions of Courts that a federal employee who retains his legal voting residence in a State is not a domicile of the District of Columbia and therefore is not subject to personal tax in the District of Columbia.

WHEREFORE, the petitioner prays that this Board may hear the proceeding, and refund the sum of \$16.36.

PAUL M. DEHART,

Petitioner

1426 Massachusetts Ave., S.E.,

Washington, D. C.

2

DISTRICT OF COLUMBIA, ss:

Paul M. DeHart, being duly sworn, says that he is the petitioner above named; that he has read the foregoing petition and is familiar with the statements contained therein, and that the statements contained therein are true.

PAUL M. DEHART

Subscribed and sworn to before me this 24th day of August, 1940.

GORDON E. CLARK,

Notary Public, D. C.

My Commission Expires April 15, 1944.

3

EXHIBIT "A"

DISTRICT OF COLUMBIA

INDIVIDUAL INCOME TAX RETURN

For Calendar Year 1939

Name. Paul M. DeHart

Address: 1426 Massachusetts Ave., S.E.,

Washington, D. C.

INCOME

1. Salaries and other compensation for personal services.	\$2699.94
3. Interest on bank deposits, notes, mortgages, etc.	238.82
Total income	\$2938.76

DEDUCTIONS

7. Contributions paid	145.55
8. Interest paid	1.00
9. Taxes paid	156.15
Total deductions	\$ 302.70

COMPUTATION OF TAX

12. Net income	\$2636.06
13. Personal exemption	\$1000.00
15. Taxable income	\$1636.06
16. Income tax	\$ 16.36

4 CERTIFICATE OF REGISTRATION

Dauphin County, Pa.

Name of Elector Paul M. DeHart

Address CITY OF HARRISBURG

No. 1933 N. 4 Street

11 Ward 2 Dist.

Serial No. 58978

Party Rep.

Insert "No Party" if not Enrolled

The above mentioned Elector has been Registered and

Enrolled this 6 Day of Sept. 1938.

Signed CHAS. H. BARNES,

Registrar or Clerk

5 OPINION No. 244

BOARD OF TAX APPEALS FOR THE
DISTRICT OF COLUMBIA

RECEIVED AND FILED OCT. 9, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

PAUL M. DEHART, Petitioner,

vs.

DISTRICT OF COLUMBIA, Respondent.

DOCKET No. 339

FINDINGS OF FACT AND OPINION

The petitioner paid to the District of Columbia an income tax for the calendar year 1939 in the sum of \$16.36. A claim for refund of such tax was duly filed by the petitioner and denied by the Assessor. The petitioner contends that such action by the Assessor was erroneous; and that his claim for refund should have been granted. In support of such contention the petitioner alleges that he was not domiciled within the District of Columbia during the calendar year 1939.

FINDINGS OF FACT

The petitioner is an individual. For several years last past the petitioner has been, and still is residing at 1426 Massachusetts Avenue, S. E., Washington, D. C.

In 1914 the petitioner accepted a clerical position in the Patent Office in Washington under Civil Service. His employment at that time was indefinite. Concerning the nature and tenure of such employment the petitioner testified as follows:

“(Q) (By the Board) What was your idea of the particular employment?”

"(A) I worked in a railroad office for 16 hours a day and 365 day a year and I was tired of it and this work was easier work and for that reason I came down but in six months I was ready to go back and I have not changed my attitude, except I am older now.

"(Q) The question that suggest itself from your statement is why didn't you go back in six months?

6 "(A) The work was so much easier and like nearly all government employees I traveled the line least resistance.

"(Q) Did you say your employment at that time was indefinite.

"(A) Yes, but I also had a year's leave of absence from the railroad that I could have gone back to but it meant sixteen hours of work a day."

The petitioner did not return to the railroad office at the end of the year, but continued in the Civil Service up to and including the present time. He is now the Chief Clerk of the Personnel and Organization Division of the National Guard Bureau, War Department, with offices in Washington.

When the petitioner came to Washington in 1914 he was a single person. In 1917 he was married to a native of Washington. No children resulted from such union. Shortly after the marriage the couple purchased as a home premises 1426 Massachusetts Avenue, S. E., in Washington, wherein they both resided as long as the wife lived, and in which the petitioner has since resided. When first purchased the home was encumbered by a mortgage, which the petitioner subsequently paid off.

The petitioner's wife died in 1935. While she was living the petitioner purchased an unimproved lot at "Selby on the Bay" in nearby Maryland and an unimproved lot in Hill Crest, a subdivision in the District of Columbia. The reason and circumstances of such purchases were stated by the petitioner on cross-examination to be the following:

"(Q) Do you own any real estate in or near the District other than your home? Your return shows you have some real estate in Maryland?

"(A) Yes, an unimproved lot at Selby on the Bay; also an unimproved lot at Hill Crest about 33rd and Denver Street, Southeast.

"(Q) Were they purchased as investments?

"(A) No, they were purchased on my wife's plea for a better residence and summer residence, but they are both up for sale. One of them is out Pennsylvania Avenue, Southeast near Anacostia.

"(Q) An unimproved lot?

7 "(A) Yes.

• • • • • • •

"Q. When did you buy this lot in Hill Crest?

"A. About 1925.

"Q. And that was bought upon the plea of your wife for a better home?

"A. Yes.

"Q. At that time did she expect you to continue to make Washington your home?

"A. We had an agreement that on retirement six months would be spent at Selby. We proposed to sell our home here and for that reason bought this land with the idea of building two cottages.

"Q. Where would the Hill Crest lot come in in that situation?

"A. Well, the neighbors talked my wife into buying it. I didn't want to and she did. In fact, it was bought on the toss of a penny.

"Q. But you did think that was the thing to do.

"A. No, I never was interested in it myself but I acquiesced in her desire. When she died I put the sign for sale on it. As a married man you are talked into a lot of things you wouldn't do otherwise.

"Q. But you did buy this property in Hill Crest?

"A. Yes."

The petitioner carries bank accounts or deposit accounts in the following Washington banking or financial institutions: National Metropolitan Bank, Bank of Commerce and Savings, and Perpetual Savings Association. He owns first trust notes on property located in Maryland and Virginia.

In 1915 the petitioner became a member of the Keller Memorial Lutheran Church of Washington, D. C. and has been an active member from that time to the present. At one time he was president of the Christian Endeavor Society attached to that church, and at the present is a member of a special committee of the church.

Up to the time of his wife's death the petitioner was a member of the Pennsylvania Society of Washington.

During the calendar year 1939 the petitioner made the following contributions to religious and charitable institutions in the District of Columbia: \$100.00 toward a window in the Lutheran Church, \$30.00 or \$35.00 for church dues, and contributions to the Red Cross and the Shrine Hospital.

8 The petitioner is a member of Washington units of the "Tall Cedars of Lebanon" and the "Mystic Shrine," both Masonic bodies.

The petitioner is a member of the Motor Club of Washington, which is the local unit of the American Automobile Association.

The petitioner has filed all of the Federal income tax returns with the Collector of Internal Revenue, Baltimore, Maryland.

Up to the repeal of the District of Columbia intangible personal property tax the petitioner always paid such tax upon his intangibles.

The petitioner was born and reared in Pennsylvania, wherein he resided until he came to the District of Columbia in 1914, and wherein reside his parents. His parents reside at premises 1933 North Fourth Street, Harrisburg, in which there is

kept intact the petitioner's room in which some of his clothes and his childhood toys are kept. The petitioner claims the above mentioned premises as his "legal residence." The petitioner does not pay any sum as rent or for lodging, but does make monetary presents to his parents from time to time. The petitioner visits his parents' home in Harrisburg over week-ends at least eight times a year, and has been there between Christmas and New Year of each year.

The petitioner is a registered voter in Pennsylvania, and has been such and has voted in all general elections there since he became of age. Up to the repeal of the Pennsylvania poll tax law the petitioner annually paid such tax. Since the enactment of the Pennsylvania occupational tax law, which superseded the poll tax law, the petitioner has annually paid such occupational tax. The payment of such taxes, respectively, was a prerequisite to voting in Pennsylvania.

In November 1912 the petitioner became a life member of the Robert Burns Lodge No. 464, F. & A. M. and the Harrisburg Consistory, A. A. S. R., both Masonic bodies.

While he resided in Harrisburg the petitioner was a member of the Bible Class of the Pine Street Presbyterian Church of that city. While on visits to Harrisburg he attends such church; and during the calendar year 1939 made to it the following contributions: \$100.00 for the white Christmas fund, to the plate collections when attending on Sundays, and an offering of \$2.00 for China missions.

The petitioner owns jointly with his father a note secured by a mortgage on real estate in Pennsylvania.

The petitioner expects retirement from the Civil Service in four years. When on the witness stand in his own behalf he testified concerning what he intends to do upon retirement as follows:

"A. My intention is this, the minute the thirty year retirement law goes through, if it does, I am selling the house and leaving. Unfortunately, on account of the mix-up last year and on account of the war situation I am

afraid this legislation will be deferred, but nevertheless I have only four years to go and then I expect to leave Washington when I retire."

It is stipulated by the petitioner and the respondent that on May 1, 1939, 13.59% of all persons employed in the executive branch of the Federal Government were so employed in the District of Columbia, and were residing in the District and nearby Maryland and Virginia; and 11.75% of all persons receiving annuities under the Civil Service Retirement Act were residing within the District of Columbia.

The Board finds as a fact that the petitioner at the end of one year after he removed to the District of Columbia in 1914 had an intention to remain and make his home in the District of Columbia for an indefinite period of time, and that such intention remained with him at least until the death of his wife.

The petitioner duly reported his income for the calendar year 1939, and on February 7, 1940 paid to the Collector of Taxes the sum of \$16.36 as an income tax for that year. At the same time the petitioner filed with the Assessor a claim for refund. On July 22, 1940 the Assessor disallowed the petitioner's claim for refund and so notified the petitioner. This proceeding was filed August 16, 1940.

There is no dispute as to the amount or computation of the tax.

10

OPINION

The sole question here presented for solution is whether the petitioner was domiciled in the District of Columbia on December 31, 1939. If he was, the income tax here involved was valid. If he was not, then it must be held that the payment of such tax was erroneous, and that the tax must be refunded. This is clear from a reading of section 2 of the District of Columbia Income Tax Act, which is in the language following:

"There is hereby levied for each taxable year upon the

income of every individual domiciled in the District of Columbia on the last day of the taxable year a tax at the following rates: * * *

The Board has here found as a fact that at the end of one year (length of leave of absence from railroad office) after the petitioner came to Washington in 1914, upon the acceptance of a Civil Service position, he had an intention to remain and make his home in the District of Columbia for an indefinite period of time, and that such intention remained with him, at least until the death of his wife in 1935. There is no proof that such intention does not still remain with the petitioner, except his declaration to the contrary, made while he was testifying in his own behalf in this proceeding, which, at the best, in matters of domicile, is unsatisfactory, and which must be regarded as a self-serving declaration. But even assuming that the petitioner has changed his intention, and now intends to remove from the District of Columbia upon his retirement four years hence, nevertheless, under the well established principle that intention to reside in a new jurisdiction unaccompanied by physical removal thereto is ineffective to accomplish a new domicile, the declared present intention of the petitioner can not affect his domicile in the District of Columbia, if, under the law as announced by the Court of Appeals, he is domiciled in the District of Columbia.

The fact that the petitioner will retire from the Civil Service in a few years should not of itself affect the proper solution of the question here presented. From the stipulation of the parties it appears that approximately the same proportion of both retired and active Federal employees reside in the District of Columbia; that is to say, 11.75 per cent of such retired
11 employees reside exclusively in the District, while 13.59 per cent of such active employees are employed in the District and reside therein and in the contiguous sections of Maryland and Virginia. It is not reasonable to suppose that Federal employees working and residing in localities without the District remove to the District upon their retirement from

Civil Service, but rather that they remain in their own localities. The Board believes that the fair inference to be drawn from such admitted facts is that most Federal employees actually working and residing in the District of Columbia continue to reside and make their homes therein upon their retirement from the Civil Service.

The petitioner, however, contends that he was not on December 31, 1939, and never has been domiciled in the District of Columbia. He relies upon the decision of the Court of Appeals in *Sweeney v. District of Columbia* App. D. C. , 113 F. (2d) 25 (Cert. Den. 60 S. Ct. 1082). In that case this Board found as a fact that when the taxpayer removed to the District of Columbia he had an intention to reside and make his home in the District for an indefinite period of time, and that on the tax day therein involved he still had such intention; that he was a free agent; and that he was physically present in the District of Columbia. It was also found as a fact in that case that the taxpayer had voted in most, if not all, of the elections in Massachusetts, and had paid the necessary poll tax. The Board also found as a fact that on the tax day involved and as late as the hearing on his appeal to the Board that the taxpayer had never paid the income tax imposed by Massachusetts on persons therein domiciled. In its opinion the Board concluded as a matter of law that the taxpayer was domiciled in the District of Columbia on the tax day, and held as a consequence that an intangible tax paid by the taxpayer had been validly assessed and collected. The taxpayer appealed to the Court of Appeals which reversed the Board's conclusion of law that the taxpayer was domiciled in the District of Columbia. From the foregoing brief statement of the facts and law in the *Sweeney* case it will be seen that there is no essential difference between the facts in that case and those in this proceeding. This Board is bound by the decisions of the Court of Appeals, and on the authority of the *Sweeney* case holds as a matter of law the petitioner herein was not on
12 December 31, 1939, and never has been domiciled in the

District of Columbia. It follows, necessarily, that the tax here involved was erroneously paid to the District of Columbia; that the Assessor should have granted a refund to the petitioner, and that the petitioner is entitled to a refund of \$16.36 paid by him to the District of Columbia as an income tax for the calendar year 1939.

Decision will be entered for petitioner.

JO MORGAN,

Member Sole.

13 BEFORE THE BOARD OF TAX APPEALS
 FOR THE DISTRICT OF COLUMBIA

RECEIVED AND FILED OCT. 9, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

PAUL M. DeHART, Petitioner,

vs.

DISTRICT OF COLUMBIA, Respondent.

DOCKET NO. 339

DECISION

This proceeding came on to be heard upon the petition filed herein, and upon consideration thereof and of the evidence adduced at the hearing on said petition, it is by the Board this 9th day of October, 1940.

ADJUDGED AND DETERMINED That an income tax for the calendar year ending December 31, 1939, in the sum of \$16.36 was erroneously collected from the petitioner by the District of Columbia, and that said petitioner is entitled to a refund of said total sum.

JO MORGAN,

Member Sole.

14 BEFORE THE BOARD OF TAX APPEALS
 FOR THE DISTRICT OF COLUMBIA

RECEIVED AND FILED OCT. 23, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, Petitioner,

VS.

PAUL M. DEHART, Respondent.

DOCKET NO. 339

PETITION FOR REVIEW BY THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
OF A DECISION OF THE BOARD OF TAX
APPEALS FOR THE DISTRICT OF COLUMBIA

The District of Columbia, petitioner in this cause, by Vernon E. West, Acting Corporation Counsel, hereby files its petition for review by the United States Court of Appeals for the District of Columbia of the decision of the Board of Tax Appeals for the District of Columbia rendered October 9, 1940, determining that an income tax for the calendar year ended December 31, 1939, in the sum of \$16.36 was erroneously collected from the respondent by the District of Columbia, and that said respondent is entitled to a refund thereof.

I

The petitioner, hereinafter referred to as the District, is a municipal corporation.

II

NATURE OF THE CONTROVERSY

(a) The controversy involves the domicile of the respondent and the validity of the collection from the respondent by the collecting authorities of the District of an income tax for the calendar year 1939.

(b) The District of Columbia Income Tax Act levies a tax for the taxable year 1939 and succeeding taxable years upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year.

15 (c) The respondent duly reported his income for the calendar year 1939, and on February 7, 1940, paid to the Collector of Taxes, D. C., the sum of \$16.36 as an income tax for that year. At the same time, the respondent filed with the Assessor, D. C., a claim for refund. On July 22, 1940, the Assessor disallowed the respondent's claim for refund and so notified the respondent. The proceeding before the Board of Tax Appeals was filed on August 16, 1940, and on October 9, 1940, the Board held that the tax was erroneously collected from the respondent and that he was entitled to a refund of the total amount thereof.

III

The District, being aggrieved by the conclusions of law contained in the opinion of the Board of Tax Appeals, and by its decision entered in pursuance thereto, desires to obtain a review thereof by the United States Court of Appeals for the District of Columbia pursuant to the provisions of Section 4, Title IX, of the District of Columbia Revenue Act of 1937, as amended (Sec. 975, Title 20, D. C. Code, 1929, Supplement V), and Section 34 of the District of Columbia Income Tax Act (Sec. 980gg., Title 20, D. C. Code, 1929, Supplement V).

(s) VERNON E. WEST,
VERNON E. WEST,
Acting Corporation Counsel, D. C.,

(s) GLENN SIMMON,
GLENN SIMMON,
Assistant Corporation Counsel, D. C.,
Attorneys for the Petitioner,
District Building.

DISTRICT OF COLUMBIA, ss:

Glenn Simmon, Assistant Corporation Counsel, D. C., being duly sworn, says that he is counsel of record in the above cause; that as such counsel he is authorized to verify the foregoing petition for review; that he has read the said petition and is familiar with the statements contained therein; and that the statements made are true to the best of his knowledge, information and belief.

(s) GLENN SIMMON,

Assistant Corporation Counsel, D. C.

SUBSCRIBED AND SWORN TO before me this 23rd day of October, 1940.

(s) ADAM GIEBEL,

Notary Public in and for the District of Columbia.

My commission expires Sept. 15, 1944.

17 BEFORE THE BOARD OF TAX APPEALS
FOR THE DISTRICT OF COLUMBIA

RECEIVED AND FILED OCT. 25, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, Petitioner,

VS.

PAUL M. DEHART, Respondent.

DOCKET NO. 339

STIPULATION

It is hereby stipulated by and between counsel for the District of Columbia, petitioner, and Paul M. DeHart, respondent, that the findings of fact by the Board of Tax Appeals in the above cause correctly state the evidence presented at the hearing before the Board in said cause.

- (s) VERNON E. WEST,
VERNON E. WEST,
Acting Corporation Counsel, D. C.,
- (s) GLENN SIMMON,
GLENN SIMMON,
Assistant Corporation Counsel, D. C.,
Attorneys for the Petitioner.
- (s) PAUL M. DEHART,
PAUL M. DEHART,
Respondent.

18 BEFORE THE BOARD OF TAX APPEALS
 FOR THE DISTRICT OF COLUMBIA

RECEIVED AND FILED OCT. 25, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA
DISTRICT OF COLUMBIA, Petitioner,

VS.

PAUL M. DEHART, Respondent.

DOCKET No. 339

STATEMENT OF POINTS ON REVIEW

To: Mr. Paul M. DeHart,
1426 Massachusetts Avenue, S. E.,
Washington, D. C.,
Respondent.

The petitioner, District of Columbia, seeking review of the decision of the Board of Tax Appeals for the District of Columbia in the above cause, relies upon the following points on review:

(1) The Board of Tax Appeals erred in holding that the respondent was not domiciled in the District of Columbia on December 31, 1939, for purposes of taxation under the District of Columbia Income Tax Act.

(2) The Board of Tax Appeals erred in failing to hold that respondent was domiciled in the District of Columbia on December 31, 1939, for purposes of taxation under the District of Columbia Income Tax Act.

(3) The Board of Tax Appeals erred in holding that an income tax for the calendar year ended December 31, 1939, was erroneously collected from the respondent by the District and that respondent is entitled to refund thereof.

(s) VERNON E. WEST,
VERNON E. WEST,
Acting Corporation Counsel, D. C.,

(s) GLENN SIMMON,
GLENN SIMMON,
*Assistant Corporation Counsel, D. C.,
Attorneys for Petitioner.*

Service of a copy of the foregoing Statement of Points on Review acknowledged this 25th day of October, 1940.

(s) PAUL M. DEHART,
Respondent.

19 BEFORE THE BOARD OF TAX APPEALS
 FOR THE DISTRICT OF COLUMBIA

RECEIVED AND FILED OCT. 25, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, Petitioner,

VS.

PAUL M. DEHART, Respondent.

DOCKET No. 339

DESIGNATION OF RECORD

To the Clerk of the Board of Tax Appeals:

You are hereby requested to prepare, certify, and transmit

to the Clerk of the United States Court of Appeals for the District of Columbia, with reference to the petition heretofore filed, the transcript of the record in the above cause prepared and transmitted as required by law and by the rules of said Court, and to include in said transcript of record the following documents, or certified copies thereof, to-wit:

- (1) Pleadings before the Board.
- (2) Findings of Fact and Opinion of the Board of Tax Appeals.
- (3) Decision of the Board of Tax Appeals.
- (4) Petition for Review, with date of filing.
- (5) Stipulation of evidence.
- (6) Statement of Points.
- (7) This Designation of Record.

(s) VERNON E. WEST,
VERNON E. WEST,
Acting Corporation Counsel, D. C.,

(s) GLENN SIMMON,
GLENN SIMMON,
Assistant Corporation Counsel, D. C.,
Attorneys for Petitioner.

Service of a copy of the above Designation of Record acknowledged this 25th day of October, 1940.

(s) PAUL M. DEHART,
PAUL DEHART,
Respondent.

20 BOARD OF TAX APPEALS FOR THE
DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, Petitioner,

VS.

PAUL M. DEHART, Respondent.

DOCKET No. 339

CERTIFICATE

I, PHYLLIS R. LIBERTI, Clerk of the Board of Tax Appeals for the District of Columbia, do hereby certify that the foregoing pages, 1 to 20, inclusive, contain and are a true copy of the transcript of record, papers and proceedings on file and of record in my office as called for by the Designation of Record in the Petition for Review in the appeal as above numbered and entitled.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of the Board of Tax Appeals for the District of Columbia, this 31st day of October, 1940.

PHYLLIS R. LIBERTI,
Clerk, Board of Tax Appeals for the
District of Columbia.

Endorsed on cover: No. 7779. District of Columbia, Petitioner, vs. Paul M. DeHart, respondent. United States Court of Appeals for the District of Columbia. Filed Nov. 1, 1940. Joseph W. Stewart, Clerk.

[fol. 20]

Monday, March 10th, A. D. 1941.

No. 7779

DISTRICT OF COLUMBIA, Petitioner,

vs.

PAUL M. DeHART

No. 7780

DISTRICT OF COLUMBIA, Petitioner,

vs.

HENRY C. MURPHY

The argument in the above entitled cause was commenced by Mr. Glenn Simmon, attorney for petitioners, continued by Messrs. Paul M. DeHart pro se No. 7779 and Harry R. Turkel, attorney for respondent in No. 7780, and concluded by Mr. Glenn Simmon, attorney for petitioners.

[fol. 21] UNITED STATES COURT OF APPEALS FOR THE DISTRICT
OF COLUMBIA

No. 7779

DISTRICT OF COLUMBIA, Petitioner,

v.

PAUL M. DeHART

Petition to Review the Decision of the Board of Tax Ap-
peals for the District of Columbia

Decided March 24, 1941

Richmond B. Keech, Corporation Counsel, Vernon E. West, Principal Assistant Corporation Counsel, and Glenn Simmon, Assistant Corporation Counsel, all of Washington, D. C., for petitioner.

Paul M. DeHart, pro se.

By leave of Court, Phineas Indritz filed a brief as *amicus curiae*.

Before Stephens, Miller and Vinson, Associate Justices

MILLER, Associate Justice:

The question presented on this appeal from a decision of the Board of Tax Appeals, in favor of respondent DeHart, is whether he is entitled to a refund of income tax paid to the District of Columbia for the year ending December 31, 1939, in the amount of \$16.36. The pertinent language of the applicable statute reads as follows:¹

Tax on Individuals.—There is hereby levied for each taxable year upon the taxable income of every individual *domiciled* in the District of Columbia on the last day of the taxable year a tax at the following rates: * * * [Italics supplied]

In the case of *Sweeney v. District of Columbia*,² this court decided that the controlling consideration in determining the domicile of a person engaged in government service in the District of Columbia is found not in length or definiteness of term, nor in election as against appointment, nor in any compulsion peculiar to military men, but in the fact that federal duty requires residential presence in the District, upon the part of all who must come and remain here to do the work of the government. Accordingly, we held that one who comes to the District and remains to render service to the government which requires his presence here, may retain his domicile in the state from which he comes until the service terminates, unless he gives clear evidence of his intention to forego his state allegiance; that the presumption of continuity of state domiciliation would require strong evidence to overcome it; that mere proof of long residence in the District, or ambiguous showing of intention to change, would be insufficient for this purpose; but that, instead, evidence of intention to

¹ Section 2 (a) of the District of Columbia Income Tax Act (Act of July 26, 1939, 53 Stat. 1087, D. C. Code (Supp. V, 1939) tit. 20, § 980a).

² — App. D. C. —, 113 F. (2d) 25, cert. denied, 310 U. S. 631.

change domicile must be clear and unequivocal. An examination of the legislative history of the Act involved in the present case clearly reveals Congressional intent that the same result should be reached in its administration.³

This, therefore, is the established law of the District of Columbia; as both parties agree. The District has prosecuted its appeal to determine, however, whether the facts of the present case bring it within the law as thus declared. The Board of Tax Appeals found, among other things, that respondent DeHart for several years last past has been and still is residing in the District of Columbia; he is in the Civil Service of the United States as Chief Clerk of the Personnel and Organization Division of the National Guard Bureau, War Department, with offices in Washington, D. C.; he was born and reared in Pennsylvania and resided there [fol. 23] until 1914, when he came to the District of Columbia; his parents continue to reside at 1932 North Fourth Street, Harrisburg, in which premises respondent's room is maintained intact and in which room some of his clothes and his childhood toys are kept; he claims these premises as his "legal residence;" he pays no sum as rent or for lodging, but makes monetary presents to his parents from time to time; he visits his parents' home over week ends at least eight times a year, and has been there between

³ Senator Overton, Chairman of the subcommittee of the Committee on Appropriations for the District of Columbia and Chairman of the Senate Conference on the bill, in presenting the Conference report said, on the floor of the Senate [84 Cong. Rec., July 11, 1939, 12347]: "Mr. President, I now call attention to the fact that the individual income tax is imposed only on those domiciled in the District of Columbia. It, therefore, necessarily excludes from its imposition all Senators and Members of the House of Representatives, the President of the United States, all Cabinet officers, and all Federal employees who have been brought into the District from the various States of the Union to serve their country in the National Capital, provided such employees have not of their volition surrendered their domiciles in the States and have voluntarily acquired domiciles within the District of Columbia."

Mr. Nichols, Chairman of the Committee on the District of Columbia, in submitting the Conference report and

Christmas and New Year of each year; he is, and has been since he came of age, a registered voter in Pennsylvania, and has voted in all general elections there during that period; he paid the Pennsylvania poll tax each year until the repeal of the poll tax law, and since that time has annually paid the Pennsylvania occupational tax; he expects retirement in four years and intends to leave Washington at that time. The Board found, also, a number of facts concerning respondent's attachments in Washington, D. C., including marriage to a native of Washington; purchase and occupancy of a home in Washington; an agreement with his wife, prior to her death in 1935, that upon retirement they would spend six months at Selby-on-the-Bay, in Maryland, where he purchased an unimproved lot for a future summer residence; bank accounts in Washington institutions; church and lodge memberships and contributions for charitable purposes in Washington; and filing of federal income tax returns in Baltimore, Maryland. Finally,

statement, on the floor of the House said [84 Cong. Rec., July 12, 1939, 12529]: "Since the question of the effect of the word 'domicile' in this act has been raised, I think the House would probably like to have the legal definition read: 'Domicile is the place where one has his true, fixed, permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning, and where he exercises his political rights. * * * There must exist in combination the fact of residence and *animus manendi*—' which means residence and his intention to return; so that under this definition he could certainly live in the District of Columbia and have his legal domicile in any other State in the United States."

On the same day, Mr. Bates, one of the conferees on the part of the House, during the debate, said on the floor of the House [84 Cong. Rec., July 12, 1939, 12528]: "That particular point that my colleague from Massachusetts raises was made very pointedly in the committee of conference by both the gentleman from Illinois and myself. We raised that particular point because we are much concerned about how those who come from our States would be affected by the income-tax provisions of the new law, and it was distinctly understood that in this bill there should be no triple taxation, and I well recall Senator Tydings raising the point also."

the Board found that at the end of one year after he removed to the District of Columbia, respondent had an intention to remain and make his home in the District of Columbia for an indefinite period of time, and that this intention "remained with him at least until the death of his wife."

Upon the basis of its findings, and upon the authority of the Sweeney case, the Board concluded that the respondent was not domiciled in the District of Columbia; hence that the tax paid by him was erroneously paid and must be refunded. The record contains no transcript of the evidence and the findings are unchallenged. The Board of Tax Appeals, in our view, correctly decided that the reasoning of the Sweeney case is conclusive of the issue presented here, and correctly held that respondent was not domiciled in the District of Columbia on December 31, 1939, the taxable date.

Affirmed.

[fol. 24]

Monday, March 24th, A. D. 1941.

* * * * *

No. 7779, January Term, 1941

DISTRICT OF COLUMBIA, Petitioner,

vs.

PAUL M. DEHART

Petition for review from the Board of Tax Appeals for the District of Columbia.

This cause came on to be heard on the transcript of the record from the Board of Tax Appeals for the District of Columbia and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decision of the said Board of Tax Appeals in this cause be, and the same is hereby, affirmed.

Per Mr. Justice Miller, March 24, 1941.

* * * * *

[fol. 25] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Apr. 1, 1941. Joseph W. Stewart, Clerk.

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA. APRIL TERM, 1941

No. 777

DISTRICT OF COLUMBIA, Petitioner,

v.

PAUL M. DEHART, Respondent

Designation of Record

The Clerk will please prepare a transcript on application for certiorari to the Supreme Court for the United States in the above-entitled cause, including therein the following:

1. The printed record in the Court of Appeals.
2. Minute entry showing argument of cause.
3. Opinion of the Court.
4. The judgment or decree.
5. This designation.
6. Clerk's certificate.

Richard B. Keech, Corporation Counsel, D. C.
Vernon E. West, Principal Assistant Corporation Counsel, D. C. Glenn Simmon, Assistant Corporation Counsel, D. C., Attorneys for Petitioner, District of Columbia.

Service of a copy of the foregoing designation of record acknowledged this 1st day of April, 1941.

Paul M. DeHart, Respondent.

[fol. 26] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 27] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 26, 1941

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Stone and Mr. Justice Roberts took no part in the consideration and decision of this application.

(4921)